

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Annie De Las Nueses	Team: Team # 8	CCRB Case #: 200406979	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 06/18/2004 5:30 PM	Location of Incident: 40-15 10th Street	Precinct: 114	18 Mo. SOL 12/18/2005	EO SOL 12/18/2005	
Date/Time CV Reported Mon, 07/19/2004 3:44 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 07/20/2004 9:21 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Gabriel Diaz	11659	925411	HB SPEC
2. Porfirio Mejia			
3. CPT John Dadamo	00000	913627	TNG UNT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Joseph Seychell	04080	902957	Housing Bronx and Queens
2. SDS Kenneth Morgan	03469	913192	H INV U
3. POM Kristian Flood	31701	926833	HB Spec Ops Sect.

Officer(s)	Allegation	Investigator Recommendation
A.POM Gabriel Diaz	Abuse: PO Gabriel Diaz stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Gabriel Diaz	Abuse: PO Gabriel Diaz frisked § 87(2)(b) and § 87(2)(b)	
C.POM Gabriel Diaz	Abuse: PO Gabriel Diaz threatened § 87(2)(b) with the use of force.	
D.CPT John Dadamo	Abuse: Lt. John Dadamo authorized the strip-search of § 87(2)(b) and § 87(2)(b)	
E. Porfirio Mejia	Abuse: PO Porfirio Mejia strip-searched § 87(2)(b) and Trinell § 87(2)(b)	

Synopsis

On June 18, 2004, § 87(2)(b) was driving with § 87(2)(b) and § 87(2)(b) when he was pulled over by PO Diaz of the Housing Borough Special Services Section (**Allegation A**). After frisking § 87(2)(b) (**Allegation B**), PO Diaz frisked § 87(2)(b) and found a loaded firearm on him. PO Diaz pulled out his weapon, pointed it at § 87(2)(b) and threatened to shoot (**Allegation C**) if he did not comply with orders. All three men were arrested and charged with the § 87(2)(b). When they were transported to the 114th Precinct for processing, PO Mejia conducted a strip search (**Allegations D & E**).

§ 87(2)(g)

The investigation was conducted by Investigator De Las Nueses; the closing report was revised by Manager Weisheit.

Summary of Complaint

§ 87(2)(b) § 87(2)(b) emailed a complaint to CCRB on July 19, 2004. (enc.6a-e). § 87(2)(b) who did not witness the incident, reported that on June 18, 2004 at 5:30 PM, officers stopped § 87(2)(b) and two acquaintances for a traffic violation. § 87(2)(b) gave the officers consent to search him. However, when the officer searched his acquaintance, he found a loaded firearm in his waistband and drugs in his pockets. The second acquaintance was “clean.” The following day, the other two men were released through a back door while § 87(2)(b) was charged with § 87(2)(b).

§ 87(2)(b) He filed a Notice of Claim seeking \$20,000,000 on September 3, 2004 (enc. 7a-c) and was interviewed at the CCRB on September 16, 2004 (enc.8a-c). The statements are consistent except where noted. On July 20, 2004, at about 6:25 PM, § 87(2)(b) was driving his 1996, blue four door Dodge to the Queensbridge Housing Projects in Queens. His friend, § 87(2)(b) was in the passenger seat, while his friend § 87(2)(b) sat in the rear. At 6:40 PM, before he made a right turn at the corner of 40th Avenue and 10th Street, § 87(2)(b) signaled and stopped at a stop sign, before proceeding to make a second right turn. He noticed a silver Impala behind them. When he heard the siren, he pulled over immediately. The officer identified as PO Gabriel Diaz and his partner stepped out of their car and approached § 87(2)(b)'s vehicle. PO Diaz asked him for his license and registration; § 87(2)(b) complied. The officers ran his information and returned to the vehicle to report that “everything was fine”. Then PO Diaz asked § 87(2)(b) if he could search his car, and § 87(2)(b) consented. When § 87(2)(b) stepped out, PO Diaz frisked him. After nothing was recovered, PO Diaz's partner walked § 87(2)(b) over to the rear of the car and PO Diaz continued to walk around to the passenger side. PO Diaz asked § 87(2)(b) to step out and then frisked him. A commotion broke out. PO Diaz drew his weapon, pointed it at the ground and said, “get down on the ground or I will shoot”. § 87(2)(b) complied with the order. § 87(2)(b) had a 40 caliber, loaded firearm on his person, which PO Diaz found during the frisk. In the Notice of Claim, § 87(2)(b) indicated the officers found marijuana on § 87(2)(b). A few seconds later, an unmarked black, 16 van arrived at the scene. The civilians were placed in it and transported to the 114th Precinct.

At the precinct, PO Diaz brought them before the desk sergeant, where § 87(2)(b) was informed that he, § 87(2)(b) and § 87(2)(b) would be charged with the possession of the gun. § 87(2)(b) was taken to the holding cell. Later PO Diaz' partner strip searched him, § 87(2)(b) and § 87(2)(b) in the bathroom. The following day § 87(2)(b) and § 87(2)(b) were allowed to go home. In the Notice of Claim, § 87(2)(b) indicated that § 87(2)(b) and § 87(2)(b) were released by the Queens County DA. § 87(2)(b) was arraigned and held until he posted \$15,000 bail on § 87(2)(b). He was then charged with parole violation and held in custody from § 87(2)(b) until § 87(2)(b). On that date, the Queens DA dropped all charges against § 87(2)(b).

Results of Investigation

§ 87(2)(b)

§ 87(2)(b) § 87(2)(b) provided a telephonic statement from § 87(2)(b) in New York on January 13th, 2005 (enc. 9a-b)) § 87(2)(g) § 87(2)(b). He stated that he and his friend, § 87(2)(b) were sitting in § 87(2)(b)'s car, which was double parked on 10th Street. They observed two officers walking towards the vehicle, and one of them, PO Diaz, walked over to the driver's side and asked § 87(2)(b) to provide his license and registration. § 87(2)(b) had to step out of the vehicle because the window did not roll down. He was then taken to the back of the vehicle and questioned. A blue van with additional officers was "called in". § 87(2)(b) was pulled from the car and searched. When they found a gun on § 87(2)(b) PO Diaz pointed his gun at him and officers threw him to the ground. PO Diaz then pointed his gun at § 87(2)(b) and another officer removed him from the car. § 87(2)(b)'s godfather came to the location because the vehicle was registered in his name. All three men were transported to the 114th Precinct and strip searched by two males officers, one was white and the other Hispanic. Marijuana was found on § 87(2)(b).

§ 87(2)(b)

§ 87(2)(b) § 87(2)(b) provided brief statements regarding this incident on January 20, 2005 and April 18, 2005 (enc. 10a-b). § 87(2)(g)

However, according to him, he had asked § 87(2)(b) to drop him off on 10th Street. He and his friends noticed that they were being followed by a blue passenger van. When they were stopped, PO Diaz explained that they had run a stop sign. At the precinct, all three of them were strip searched by an officer who was light skinned Hispanic, about 5'5-5'9, with a medium build and black hair. He was unable to confirm if this officer was the same officer that initially pulled them over.

Attempts to locate and Interview Additional Witnesses

Complainant § 87(2)(b) identified § 87(2)(b)'s Godmother, as having witnessed the incident. From September 22, 2004 to January 22, 2005 five phone calls were placed to § 87(2)(b)'s home and contact letters were also sent to her home on November 29, 2004, January 11, 2005 and January 28, 2005. However, to date she has not contacted the agency and was considered uncooperative.

Officer Statements

PO Gabriel Diaz

According to PO Diaz's memobook (enc. 11a-b), he made a car stop at 18:40 i/f/o 40-1510 Street. There were 3 male blacks inside the car. PO Diaz observed the front seat passenger reach "under car" and adjust his waistband. At 18:45 there were 3 under for loaded 40 handgun. Also recovered handgun from def § 87(2)(b)'s front waistband. At 19:10 they arrived at the 114 Pct. They were debriefed by the 114 Squad at 2210 and by a firearm detective at 2240.

The Booking and Arraignment Disposition System reports (enc. 12a-d) indicates that § 87(2)(b) was found in possession of a loaded handgun. He was charged with § 87(2)(b). PO Diaz was the arresting officer. The property index (enc. 31a) indicates PO Diaz vouchered 13 baggies of marijuana and a 40 caliber semi-automatic handgun with 8 rounds of ammunition.

PO Gabriel Diaz of the Housing Borough Special Operation Section is a Hispanic Male, who is 5'5 and weighs 150 pounds. He was interviewed at the CCRB on December 15, 2004 (enc. 14a-d). On the date of the incident he was working on a citywide anti-crime unit. He and his partner PO Mejia were

investigating a complaint of several shootings and shots fired in the Queensbridge Houses located in Queens. They were patrolling in a Chevy Impala and were stationed at 41st Avenue and 10th Street watching for traffic infractions. Once PO Diaz observed the traffic infraction they followed the car for about two blocks. He felt that the occupants were aware of them because they pulled over to the left. At that time PO Diaz notified his supervisor, LT Dadamo that he intended to pull the car over, and then turned on the car's lights and sirens. It was then, that he noticed as he walked to the car that the front passenger reached under the seat of the car, then adjusted his waistband and placed his hands on his lap. When he reached the car, § 87(2)(b) asked to step out of the car and PO Diaz allowed him to. At that time, PO Diaz also called for back up and spoke with § 87(2)(b) about his driving information. In that time back-up arrived and an officer took each of the corners of the car. PO Diaz went to the passenger side of the car and asked the individual identified as § 87(2)(b) to step out of the car, and place his hands on the hood. Prior to the frisk, PO Diaz asked § 87(2)(b) if he had any weapons on him and he refused to answer. PO Diaz immediately frisked the waistband on § 87(2)(b) pants. When PO Diaz was certain what he felt was a handgun he pulled out his weapon and told § 87(2)(b) that if he didn't get down on the ground he would get shot. PO Flood came over and assisted in removing the gun from the § 87(2)(b) pants. PO Mejia and PO Glands proceeded to pull the other passenger out of the vehicle. All the individuals were frisked and searched at the scene. Lt. Dadamo arrived at the scene and PO Diaz briefed him on what occurred, handed him the firearm and followed orders to take all three occupants to the 114th Precinct to be processed. He was aware that the men were strip searched, but he was not present. He reasoned that the 15 bags marijuana was cause to search for drugs on all of them.

Lt. John Dadamo

Lt. Dadamo acknowledged that he wrote the command log (enc. 16a) relating to the three men. Each entry indicates that § 87(2)(b) and § 87(2)(b) were each in possession of a Smith & Wesson 40 caliber handgun. IN addition, § 87(2)(b) had 13 baggies of marijuana and \$424. There was no notation about strip searches being performed.

Lt. Dadamo, a white male who is 5'10" and weighs 190 lbs. was interviewed at the CCRB on March 7, 2005 (enc. 17a-b). On June 18, 2004, Lt. Dadamo was working by himself as the Anti Crime supervisor, and on this day they were working on conditions at the Queensbridge Houses Section. Lt. Dadamo made no pertinent memo book entries. He stated that after receiving an assistance call at about 5:30 PM, he arrived to the corner of 10th Street and observed § 87(2)(b) and § 87(2)(b) as they stood near their car. He was briefed about the stop by the officers at the scene, and ordered that all three individuals be taken to the 114th Precinct. He was adamant that at no time did he authorize a strip search of any of the individuals. Lt. Dadamo also denied that PO Mejia asked for authorization to conduct anything other than a general search.

PO Porfirio Mejia

According to a § 87(2)(b) PO Mejia was arrested with 5 other individuals and charged in federal court with § 87(2)(b). PO Mejia and the others were arrested in a DEA sting operation after officials received information that imposters and actual law enforcement officers were robbing drug dealers during home invasions. PO Mejia resigned after his arrest; the arrest was confirmed by DAU liaison (enc25c).

Police Documents

The Prisoner Holding Pen Roster (enc. 19a)) indicates § 87(2)(b) and § 87(2)(b) were logged into the pen at 1930 and left at 2325 for Queens Central Booking.

Because the arrests were sealed, no other documentation was available.

Criminal Conviction History

§ 87(2)(b)

§ 87(2)(b)

[REDACTED]

§ 87(2)(b)

§ 87(2)(b)

[REDACTED]

§ 87(2)(b)

§ 87(2)(b)

[REDACTED]

Substantiated CCRB allegations

Neither PO Diaz nor LT Dadamo has any substantiated allegations in their CCRB Histories (enc. 2a-b, 3a).

Conclusions and Recommendations

Officer Identification

§ 87(2)(b) identified PO Diaz by name. PO Diaz also acknowledged that he decided to stop the car. When he found the sidearm on § 87(2)(b) PO Diaz drew his weapon. Accordingly, allegations A-C are being pleaded against PO Diaz. Both § 87(2)(b) and PO Diaz stated that it was PO Mejia who strip searched the three men. Although Lt. Dadamo denied knowledge of the search, he was the supervisory officer overseeing the arrest and processing of the 3 men. Accordingly, he is also being listed as a subject officer for the strip search allegation.

Undisputed Facts

It is undisputed that PO Diaz pulled over the vehicle which § 87(2)(b) was driving and in which § 87(2)(b) and § 87(2)(b) were passengers. PO Diaz obtained driver's information from § 87(2)(b) exited the vehicle. When additional officers arrived, § 87(2)(b) was pulled out of the car and frisked. Officers uncovered a loaded firearm on § 87(2)(b) PO Diaz drew his weapon, pointed it at § 87(2)(b) and threatened to shoot him, if he did not comply with orders. All three individuals were subsequently arrested and charged with the possession of a firearm and were transported to the 114th Precinct for processing. At the precinct, they were strip searched.

Disputed Facts

It is disputed whether § 87(2)(b) ran a stop light. Also in dispute is whether PO Diaz checked out § 87(2)(b)'s license and registration before § 87(2)(b) exited the vehicle or if § 87(2)(b) stepped out of the vehicle voluntarily when PO Diaz asked for his identification. It is also disputed whether § 87(2)(b) was frisked immediately upon exiting the vehicle or if he was frisked and searched after the loaded firearm was found on § 87(2)(b).

Credibility

Civilians

§ 87(2)(g)
[REDACTED]

Officers

§ 87(2)(g)
[REDACTED]

Allegation A : PO Diaz stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were passengers in.

§ 87(2)(g) he was consistent about § 87(2)(b) s having run a stop sign. Furthermore, § 87(2)(b) and § 87(2)(b) § 87(2)(g) both assert that PO Diaz explained the reason for the stop was that specific traffic infraction. § 87(2)(g)

Kamins New York State Search and Seizure addresses that issue in the discussion of *Whren v. United States*, 517 U.S. 806, 116 S.Ct. 1769, 125 L.Ed 2d 89 (1999) (enc. 1a-b) where the Supreme Court “found pretext stops to be lawful and held that even if a police officer uses a traffic infraction as a pretext for stopping an automobile to investigate a more serious crime and even if the traffic stop is not within the officer’s primary assignment , the arrest will be valid as long as the officer has probable cause to make the traffic stop.” § 87(2)(g)

Allegation B: PO Gabriel Diaz frisked § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) both asserted that § 87(2)(b) was the first person to be frisked. PO Diaz then frisked § 87(2)(b) and found the loaded firearm. § 87(2)(g)

Allegation C: PO Gabriel Diaz threatened § 87(2)(b) with the use of force

After discovering a fully loaded firearm on § 87(2)(b) PO Diaz pulled out his weapon and ordered § 87(2)(b) to get on the ground. PO Diaz also acknowledged that he informed § 87(2)(b) that if he did not comply with the order, he would be shot. § 87(2)(g)

Allegation D: Lt. John Dadamo authorized the strip searches of § 87(2)(b) and § 87(2)(b)

§ 87(2)(g)

Allegation E: PO Porfirio Mejia conducted a strip searches of § 87(2)(b) and § 87(2)(b)

§ 87(2)(g) this officer resigned on December 10, 2004, § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: